IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5032 OF 2004.

Shri Shivneri Sahakari Bank Ltd. .... Petitioners.

versu.

M/s.Shinde Builders & Developers
and others. .... Respondents.

Shri A.A.Kumbhakoni for the Petitioners.

Shri H.S.Venegaonkar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 9th December, 2004.

P.C.:

1. Heard Shri Kumbhakoni for the Petitioners and Shri Venegaonkar for the Respondents.

2. The challenge in this petition is to the order dated 13th May 2004 passed by the learned Member of the Maharashtra State Cooperative Appellate Court, Mumbai Bench at Pune. By the said order the Respondents Nos.1 to 3 were granted leave to prefer an appeal against the ad-interim order dated 23rd March 2004. It is not in dispute that the said ad-interim order was passed on interim application at Exh.5 in the Dispute filed by the Petitioner-Bank. It is also not in dispute that the interim application at Exh.5 is now finally decided by the Cooperative Court by an order dated 29th October 2004. Hence the ad-interim order dated 23rd March 2004 is no longer operative. The leave which is granted by

the impugned order was confined to the appeal which was preferred for challenging the ad-interim order dated 23rd March 2004. Therefore, in my view, nothing survives in this petition. Shri Venegaonkar, the learned Counsel appearing for the Respondents Nos.1 to 3 stated that the Respondents Nos.1 to 3 have filed an application in the said Appeal praying for amendment of the Appeal Memo for the purpose of challenging the final order passed on Exh.5 on 29th October 2004. Shri Kumbhakoni, the learned Counsel appearing for the Petitioners submitted that if the Respondents Nos.1 to 3 are desirous of preferring as Appeal against the final order passed on Exh.5, they will have to apply for a fresh leave from the Appellate Court.

3. In this view of the matter, the petition does not survive and the same is disposed of with no order as to costs. It is made clear that the Application for amendment made by the Respondents Nos.1 to 3 will be heard and decided by the Appellate Court on its own merits and it will be open for the Petitioners to raise all permissible objections to the said Application.

4. Parties to act on authenticated copy of this order.

Judge.